

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT HUNTINGTON

CURTIS BURDINE, JR.,

Plaintiff,

V.

CIVIL ACTION NO. 3:04-1323

PRIMECARE MEDICAL OF
WEST VIRGINIA, INC.,

Defendant.

FINDINGS AND RECOMMENDATION

In this civil rights action, filed under the provisions of 42 U.S.C. §1983, plaintiff alleges defendant denied him adequate medical treatment. On June 15, 2005, defendant filed a motion to dismiss or, in the alternative, for summary judgment and on July 5, 2005, defendant filed a supplemental motion to dismiss or, in the alternative, for summary judgment. Following the filing of defendant's motions, the Court, by orders entered June 15, 2005 and July 18, 2005, advised plaintiff of his right to respond to the motions within fourteen days from the date of entry of the Court's orders, and that failure to respond would result in the entry of a judgment denying the relief sought in the complaint and dismissal of the action. Although the time provided for filing responses to the motions has passed plaintiff has failed to respond in any manner.¹

¹ It appears that plaintiff is no longer incarcerated at the Western Regional Jail, a circumstance which would render his complaint moot since he seeks only equitable relief.

RECOMMENDATION

In accordance with the foregoing, it is **RESPECTFULLY RECOMMENDED** that defendant's motions to dismiss or, in the alternative, for summary judgment be granted and this action be dismissed with prejudice.

Plaintiff and defendant are hereby notified that a copy of these Findings and Recommendation will be submitted to the Honorable Robert C. Chambers, United States District Judge, and that, in accordance with the provisions of Rule 72(b), Fed.R.Civ.P., the parties may, within thirteen days of the date of filing these Findings and Recommendation, serve and file written objections with the Clerk of this Court, identifying the portions of the Findings and Recommendation to which objection is made and the basis for such objection. The judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made in accordance with the provisions of 28 U.S.C. §636(b) and the parties are advised that failure to file timely objections will result in a waiver of their right to appeal from a judgment of the district court based on such Findings and Recommendation. Copies of objections shall be served on all parties with copies of the same to Judge Chambers and this Magistrate Judge.

The Clerk is directed to file these Findings and Recommendation and to mail a copy of the same to plaintiff and all counsel of record.

DATED: August 10, 2005


MAURICE G. TAYLOR, JR.
UNITED STATES MAGISTRATE JUDGE